UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

IN RE:

MARTIN JAMES DEKOM, SR., CASE NO.: 19-30082-KKS
CHAPTER: 13

Debtor.
_____/

ORDER DENYING DEBTOR'S *NOTICE [SIC] AND MOTION TO DISQUALIFY MILLER AND HART AS TRUSTEES [SIC]* (DOC. 282), AND IMPOSING RULE 9011 SANCTIONS

THIS CASE is before the Court on the document entitled *Notice* [*sic*] *and Motion to Disqualify Miller and Hart as Trustees* [*sic*] ("Motion," Doc. 282) filed on March 16, 2020 by self-represented Debtor, Martin James Dekom, Sr. The Court has determined that it is appropriate to rule on the Motion without a hearing. For the reasons set forth below, the Court denies the Motion and imposes sanctions.

The form of the Motion is improper.

As with virtually all of his prior motions, Debtor includes his own version of a notice, directing that "[y]our Opposition [*sic*] papers are due in 21 days plus 3 for mail service of the date on which you were served."[1] Additionally, Debtor attaches to and includes in the Motion a document

[1] Doc. 282, p. 1.

entitled "Notice of [Motion to] [Objection to]."[2] Neither of these "notices" are in a format approved by this Court, nor are they of any force or effect.

The statute on which Debtor bases the Motion is inapplicable.

By the Motion, Debtor asks this Court to disqualify the standing Chapter 13 Trustee, Leigh D. Hart ("Trustee"), and her Staff Attorney, William Miller ("Mr. Miller"). In support of the Motion Debtor cites 11 U.S.C. § 327(a). That Code section, entitled "Employment of professional persons," states:

> Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.[3]

Most bankruptcy courts to have considered the matter have held that Section 327 of the Bankruptcy Code applies to Chapter 13 cases.[4] But Section 327 has no applicability to the Trustee or Mr. Miller.

By its own terms, Section 327 does not apply to a standing Chapter 13 Trustee appointed by the Office of the United States Trustee as an

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[2] *Id.* at p. 5.
[3] 11 U.S.C. § 327(a) (2020).
[4] *See, e.g., In re Abrass,* 250 B.R. 432, 434 (Bankr. M.D. Fla. 2000)(citing cases from other parts of the U.S. as well as those holding the opposite view which are in the minority).

officer of the Court pursuant to 28 U.S.C. § 586(b).[5] The standing Chapter 13 Trustee evaluates the case, investigates the financial affairs of a debtor and serves as a disbursing agent, collecting payments from the debtor and making distributions to creditors.[6] Standing Chapter 13 Trustees' qualifications are evaluated by the Office of the United States Trustee prior to their appointment. A standing Chapter 13 Trustee is not paid from the bankruptcy estate upon a fee application subject to Court approval, as are outside professionals employed under 11 U.S.C. § 327. Rather, a standing Chapter 13 Trustee's compensation is governed by statute.[7]

Similarly, Section 327(a) of the Bankruptcy Code does not apply to a Staff Attorney employed by a standing Chapter 13 Trustee. Only when a standing Chapter 13 Trustee seeks to employ outside counsel, rather

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[5] 11 U.S.C. § 1302(a) (2020): "If the United States trustee appoints an individual under section 586(b) of title 28 to serve as standing trustee in cases under this chapter and if such individual qualifies under section 322 of this title, then such individual shall serve as trustee in the case. . . ."

[6] 11 U.S.C. § 1302(b) (2020); "Chapter 12 and chapter 13 trustees are called 'standing trustees' because, pursuant to statute, they have a standing appointment from the United States Trustee to administer chapter 12 and chapter 13 cases within a particular geographic area." *Private Trustee Information,* The United States Department of Justice, https://www.justice.gov/ust/private-trustee-information (last updated May 12, 2015). *See also*, *Chapter 13- Bankruptcy Basics,* United States Courts, https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-13-bankruptcy-basics (last visited Mar. 27, 2020).

[7] 28 U.S.C. § 586 (e)(2).

than her own Staff Attorney, does Section 327 of the Code become applicable.[8] A Chapter 13 Trustee's Staff Attorney is paid out of the Chapter 13 Trustee's budget, which is overseen and approved by the Office of the United States Trustee (a branch of the United States Department of Justice), and not from bankruptcy estate assets. Like the Trustee, Mr. Miller is not required to apply for or obtain an order approving his employment or compensation.

Debtor's bases for disqualification are unfounded.

Aside from Debtor's erroneous premise that Section 327 applies, Debtor's reasons for seeking disqualification of the Trustee and Mr. Miller are unfounded. Debtor's first complaint against Mr. Miller is that he is attempting to "harass the debtor with vexatious litigation."[9] The harassment Debtor complains of is Mr. Miller's filing of the *Chapter 13 Trustee's Motion to Dismiss*.[10] Debtor contends that the Trustee's motion to dismiss this case is improper because the grounds for dismissal consist of Debtor's failure to address the Trustee's objections to confirmation.

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[8] *Handbook for Chapter 13 Standing Trustees,* U.S. Department of Justice Executive Office for United States Trustees, 3-29 (October 1, 2012), https://www.justice.gov/sites/default/files/ust/legacy/2015/05/05/Handbook_Ch13_Standing_Trustees_2012.pdf.

[9] Doc. 282, p. 1.

[10] Doc. 279.

Debtor's assertion is patently ridiculous. The Trustee's motion to dismiss this case is in proper form.[11] Further, in that motion the Trustee accurately avers that Debtor has never filed a Notice of Adequate Protection Payment as required by the Duties of the Debtor Order.

The factual allegations in the Motion are not true and are sanctionable.

Next the Debtor accuses Mr. Miller of being untruthful, acting as co-counsel for a creditor in the case, conducting *ex parte* communications with this Court and asking Debtor biased questions during cross-examination.[12] Debtor's complaint about the Trustee is that she corresponds with self-represented parties only via U.S. Mail rather than email or some other electronic means.[13] Debtor's complaints about Mr. Miller are groundless. Debtor's claim that Mr. Miller was untruthful is based solely on allegations in pleadings filed by the Trustee and signed by Mr. Miller that Debtor finds offensive. Debtor's claim that Mr. Miller was acting as co-counsel for a creditor, Nationstar, is founded solely on the fact that Mr. Miller and Nationstar's counsel sat at the same counsel table during hearings and may have conferred with each other. Debtor's

[11] Fed. R. Bankr. P. 9013.
[12] Doc. 282, p. 3.
[13] *Id.* at p. 4.

complaint about the Trustee is equally baseless. Nothing dictates how or in what media a trustee must communicate with debtors in cases to which the trustee is assigned. In the Motion, Debtor does not allege or suggest any action by Mr. Miller or the Trustee that is inappropriate or unprofessional.

Rule 9011 sanctions are appropriate.

Debtor's suggestion that Mr. Miller has engaged in *ex parte* communication with this Court is unfounded, offensive, vexatious, inappropriate and sanctionable.

Rule 9011 provides, in pertinent part:

> A party who is not represented by an attorney shall sign all papers . . . . By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion or other paper, an . . . unrepresented party is certifying that to the best of the person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay . . . ; (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery . . . .[14]

[14] Fed. R. Bankr. P. 9011(a) and (b).

Debtor accuses Mr. Miller of engaging in *ex parte* communication with this Court because he allegedly saw Mr. Miller go in and out of a door "leading to the judge's chambers" in the Pensacola courthouse before the final evidentiary hearing:

> Miller's behavior at the Pensacola courthouse raises serious questions of impropriety. While waiting for the prior case to conclude, debtor [*sic*] and his wife remained outside the courtroom. Present also were Nationstar's counsel, Elizabeth Eckhart, Nationstar's witness, Grant LaClave, and Miller. Time and again, Miller would confer with Eckhart and LaClave, then enter the limited access doorway next to the courtroom. Minutes later he would emerge, and confer with them again. He did this repeatedly. While it is unknown exactly who was behind the door leading to the judge's chambers, a reasonable person would conclude that Miller was acting as a go-between for Nationstar for *ex parte* purposes.[15]

The fallacy of this statement, and the reason it violates Rule 9011, is that there is no "door leading to" this judge's chambers in the Pensacola courthouse readily accessible to the public; certainly no such door outside the courtroom where people gather in preparation for bankruptcy hearings.

The Pensacola courthouse has only one courtroom available for use by judges, including the undersigned, in conducting bankruptcy

[15] Doc. 282, p. 3.

hearings. The door leading to chambers is inside the courtroom and has limited access by the judge, authorized staff and Court Security Officers. A reasonable inquiry would have shown that it would be utterly impossible for Mr. Miller, or any attorney, to reach the undersigned's chambers from "a doorway next to" the Pensacola courtroom.[16]

Rule 9011 sanctions are appropriate and necessary.

This Court has warned Debtor that continuing his pattern of false representations could result in sanctions, including dismissal of this case with prejudice for at least one year.[17] Despite this warning, Debtor has crossed the line—again. Imposing sanctions on Debtor pursuant to Rule

[16] The outrageous allegations Debtor makes in his Motion are in keeping with his *modus operandi*. In this and other cases, when things did not go as Debtor would like he would attack parties by filing documents and commencing litigation against court staff, attorneys and judges. *See, e.g., Dekom, et.al. v. Fannie Mae et. al,* Case No. 17-cv-2712-RRM-ARL (filed against multiple defendants including several judges, "8 motions clerks", the Nassau County Clerk and various other court personal. *See Dekom, et.al. v. Fannie Mae et. al,* Case No. 17-cv-2712-RRM-ARL, Doc. 235, *Notice and Motion to Reconsider Order Denying Equal Protection and Granting Motions to Dismiss* (E.D.N.Y. Apr. 11, 2019)("Plaintiff, Martin Dekom, Sr. filed this motion stating that '[u]nfortunately, the likelihood that Hon. Bianco is a racist piece of shit does not automatically void his judgments. However, inflicting his own version of second class justice by 'nigging" litigants violates the Equal Protection and Due Process clauses of the Constitution.'"); *See also* Doc. 83 ("Your Honor is the Chief Administrative Judge, from whom all logistics flow, and to which all bureaucratic roads lead, *Capo di Tutti Capi* [literal translation to Italian: 'the boss of bosses;' often used to refer to powerful heads of a crime family].") and ("[T]he IT nerd who manages the [Court's] ECF portal [referring to this Court's IT staff] is not the tail that wags the Court.").

[17] *Order for Debtor to Show Cause Why: 1) He Should Not be Declared a Vexatious Litigant: 2) Fed. R. Bankr. P. 9011 Sanctions Should Not be Imposed; and 3) This Case Should Not be Dismissed with Prejudice,* Doc. 200. ("Debtor is on notice that all conduct outlined in this Order constitutes grounds for potential Rule 9011 sanctions."). *Id.* at p.7.

9011 is appropriate and necessary to deter repetition of this conduct or comparable conduct by others.

Federal courts, including Bankruptcy Courts, are vested with the "inherent power to control [their] proceedings and the conduct of the parties involved."[18] A court may impose an appropriate sanction if it finds that a party has violated Rule 9011.[19] The Eleventh Circuit has determined that Rule 9011 authorizes sanctions when "(1) the papers are frivolous, legally unreasonable, or without factual foundation, or (2) the pleading is filed in bad faith or for an improper purpose."[20] If the claim is objectively frivolous, the Court must decide whether a reasonable inquiry would have made the party aware that the filing was without merit.[21] The language of the rule clearly stresses the need for a pre-filing inquiry into both the factual and legal basis supporting the motion.[22] If the party has failed to conduct a reasonable inquiry into the matter, then the Court

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[18] *In re Benevento*, 10-25535-EPK, 2013 WL 1292671, at *9 (Bankr. S.D. Fla. Mar. 27, 2013)(citing *Glatter v. Mroz (In re Mroz),* 65 F.3d 1567, 1574 (11th Cir.1995)).

[19] Fed. R. Bankr. P. 9011(c); *See* 10 Collier on Bankruptcy P 9011.04 (16th ed. 2018). Bankruptcy Rule 9011 is substantially identical to Federal Rule of Civil Procedure 11, making authorities applying Rule 11 useful in applying Rule 9011.*Glatter v. Mroz (In re Mroz)*, 65 F.3d 1567, 1572 (11th Cir. 1995).

[20] *In re Mroz,* 65 F.3d at 1572.

[21] *Id.* at 1573.

[22] *Parker v. Livingston, et. al.,* Adv. Case No.:05-3003, Doc. 26, p. 3, *Order Granting Defendants' Motion for Sanctions* (Bankr. N.D. Fla., May 16, 2005) (citing *In re Thomason*, 161 B.R. 281, 284 (Bankr. N.D. Fla. 1993)).

is obligated to impose sanctions, even if the party had a good faith belief that the claim had merit.[23] A pleading is factually groundless and requires sanctions when, as here, the party has absolutely no evidence to support its allegations.[24]

The Eleventh Circuit in *Mroz* did not set out a specific framework for analyzing the "bad faith/improper purpose" prong.[25] Courts apply the objective standard of reasonableness under the circumstances in analyzing the debtor's conduct under Rule 9011.[26] As this Court has previously held:

> The rule [9011] is not intended to deter an attorney's or party's enthusiasm or creativity in pursuing factual or legal theories, but rather, to deter and punish those parties responsible for bringing meritless actions which result in needless litigation delay and expense.[27]

Using the Eleventh Circuit analysis in *Mroz* and the objective standard applied by other courts, reasonableness under the

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[23] *Id.* (citing *In re Mroz*, 65 F.3d 1567, 1573 (11th Cir. 1995)).
[24] *Id.* (citing *In re General Plastics Corp.*, 170 B.R. 725, 731 (Bankr. S.D. Fla.1994)).
[25] *In re Mroz*, 65 F.3d at 1572.
[26] *Parker v. Livingston, et. al.,* Adv. Case No.:05-3003, Doc. 26, p. 3, *Order Granting Defendants' Motion for Sanctions* (Bankr. N.D. Fla., May 16, 2005); *See In the Matter of Graffy*, 233 B.R. 894, 896 (Bankr. M.D. Fla. 1999).
[27] *In re Thomason,* 161 B.R. 281, 284 (Bankr. N.D. Fla. 1993) (citation omitted).

circumstances, it is beyond dispute that Debtor's Motion violates the "bad faith/improper purpose" prong of Rule 9011.[28]

Self-represented Debtor is held to the same standard as an attorney under Rule 9011.

In the Eleventh Circuit, "*[p]ro se* pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed."[29] But self-represented parties, including Debtor, still must comply with the Federal Rules of Civil Procedure.[30] Even for a self-represented party, like Debtor, "conclusory allegations, unwarranted deductions of facts or legal conclusions masquerading as facts will not prevent dismissal."[31]

The "safe harbor" requirement of Fed. R. Bankr. P. 9011(c)(1)(A) has been met.

The Order to Show Cause entered on December 27, 2019 provided Debtor ample notice that the Court would consider sanctions, including dismissal of this case with prejudice, if he were to continue filing inappropriate documents:

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[28] *In the Matter of Graffy*, 233 B.R. at 896.
[29] *Evans v. Ga. Reg'l Hosp.*, 850 F.3d 1248, 1253 (11th Cir. 2017), *cert. denied*, 138 S. Ct. 557 (2017); *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998) (per curiam).
[30] *Moon v. Newsome,* 863 F.2d 835, 837 (11th Cir. 1989).
[31] *Oxford Asset Mgmt., Ltd. v. Jaharis*, 297 F.3d 1182, 1188 (11th Cir. 2002)(citation omitted).

> Since the Court granted Debtor's counsel leave to withdraw from the Chapter 13 case, Debtor has operated in disbelief of and disregard for the sanctity and propriety of court proceedings. In the myriad papers he has filed to date he has exhibited disrespectful conduct before this Court. By including his own deadlines for others to respond to his papers, he has acted as if he himself were a court and/or judge of his own court or of this Court. By filing numerous papers asserting and reasserting unsupportable claims and objections, some of which pertain to issues already adjudicated by the New York State courts, he has unnecessarily and frivolously multiplied the proceedings before this Court.
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> . . .
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> *Debtor is on notice that all conduct outlined in this Order constitutes grounds for potential Rule 9011 sanctions.*[32]

The Debtor having been put on notice more than twenty-one (21) days ago, the Court finds that the "safe harbor" requirements of Fed. R. Bankr. P. 9011(c)(1)(A) were met.

CONCLUSION

This Court's inherent authority, as well as that granted by 11 U.S.C. § 105, constitute ample authority to impose sanctions. The facts set forth above, together with this Court's finding that Debtor filed his Petition and Sixth Amended Chapter 13 Plan in bad faith, provide overwhelming grounds on which the Court should dismiss this case with

[32] Doc. 200, pp. 1-2, 7 (emphasis added).

prejudice as a sanction for Debtor's violation of Rule 9011, in addition to dismissing Debtor's case with prejudice pursuant to 11 U.S.C. §§ 105 and 349.

For the reasons stated, it is

ORDERED:

1. Debtor's *Notice* [*sic*] *and Motion to Disqualify Miller and Hart as Trustees* [*sic*] (Doc. 282) is DENIED.
2. Pursuant to Fed. R. Bankr. P. 9011(c) and in addition to the dismissal of this case for cause pursuant to 11 U.S.C. §§ 105, 349, this case shall be dismissed, with prejudice. Debtor shall be prohibited from filing another case under any chapter of the Bankruptcy Code for a period of one (1) year in any court in the United States.

DONE AND ORDERED on April 6, 2020.

KAREN K. SPECIE
Chief U. S. Bankruptcy Judge

cc: all parties in interest, including
Martin James Dekom, Sr.
9050 Sunset Dr.
Navarre, FL 32566